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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 LAWRENCE DELISIO,

11 Plaintiff,

12 v.

13 WELLS FARGO HOME MORTGAGE, *et*  
14 *al.*,

15 Defendants.

Case No. 2:11-CV-00426-KJD-LRL

**ORDER**

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17 Presently before the Court is Defendant Wells Fargo Home Mortgage's Motion to Dismiss  
18 (#14). Though the time for doing so has passed, Plaintiff has failed to respond or otherwise oppose  
19 Defendant Wells Fargo's motion to dismiss. Therefore, in accordance with Local Rule 7-2(d) and  
20 good cause being found, the Court grants the motion to dismiss.

21 Plaintiff's first claim for breach of the loan modification contract must be dismissed, because  
22 he either failed to accept the terms of the contract by refusing to pay the \$1,878.82 service charge  
23 required by the modification or he first breached the agreement by refusing to pay it. Plaintiff's  
24 second claim for relief for unfair lending practices arising under NRS 598D.100(1)(c) must be  
25 dismissed, because Nevada's Unfair Lending Practices Statute, NRS 598D.100, *et. seq.*, does not  
26 apply to Plaintiff's purchase money mortgage, Wells Fargo is not a lender as defined in the statute,

1 and the service charge is not a prepayment penalty that was financed. Plaintiff's third cause of action  
2 for breach of the covenant of good faith and fair dealing must be dismissed because Wells Fargo did  
3 not breach the contract. Plaintiff's fourth cause of action for tortious breach of the covenant of good  
4 faith and fair dealing must be dismissed because no "special relationship" creating a fiduciary duty  
5 existed. Finally, Plaintiff's claims for declaratory relief must be denied, because, as alleged, Plaintiff  
6 has failed to demonstrate that Wells Fargo violated Nevada statute, that foreclosure has actually  
7 occurred, and that he was not in default on his loan or that he was capable of tendering the  
8 undisputed amount due and payable.

9 Accordingly, IT IS HEREBY ORDERED that Defendant Wells Fargo Home Mortgage's  
10 Motion to Dismiss (#14) is **GRANTED**;

11 IT IS FURTHER ORDERED that the Clerk of the Court enter **JUDGMENT** for Defendants  
12 Wells Fargo Home Mortgage and Wells Fargo Bank, N.A., d/b/a America's Servicing Company and  
13 against Plaintiff.

14 DATED this 18<sup>th</sup> day of October 2011.  
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18 Kent J. Dawson  
19 United States District Judge  
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